

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY AVON DABBS SR.,
Plaintiff,
v.
OFFICER PRESTON, et al.,
Defendants.

Case No. 5:22-cv-01292-MEMF-KES

ORDER ACCEPTING IN PART REPORT
AND RECOMMENDATION OF U.S.
MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings and all the records and files herein, along with the Report and Recommendation (“R&R”) of the United States Magistrate Judge (Dkt. 12). No objections to the R&R were filed, and the deadline for filing such objections has passed. The Court accepts the findings, conclusions, and recommendations of the United States Magistrate Judge, with the clarification noted below.

The R&R found all of Plaintiff's a 42 U.S.C. § 1983 Heck-barred or, alternatively, time-barred. They cannot be both, because Heck-barred claims do not accrue unless and until the plaintiff's underlying conviction has been invalidated. Heck v. Humphrey, 512 U.S. 477, 489-90 (1994) ("Under our analysis the statute of

1 limitations poses no difficulty while the state challenges are being pursued, since
2 the § 1983 claim has not yet arisen."); see also Wallace v. Kato, 549 U.S. 384, 393
3 (2007) (holding that the Heck bar "delays what would otherwise be the accrual date
4 of a tort action until the setting aside of an extant conviction which success in that
5 tort action would impugn"). Heck-barred claims should be dismissed without
6 prejudice "so that [the plaintiff] may reassert his claims if he ever succeeds in
7 invalidating his conviction." Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th
8 Cir. 1995).

9 The Court, therefore, dismisses all Plaintiff's claims without prejudice, but
10 without further leave to amend in this action. The Court declines to reach the
11 question of whether the claims are time-barred, and therefore DECLINES to adopt
12 the portion of the R&R concerning this alternative ground for dismissal.

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15 DATED: January 22, 2025



16 MAAME EWUSI-MENSAH FRIMPONG
17 UNITED STATES DISTRICT JUDGE

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